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UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF CALIFORNIA

J. ROBERT KILLIAN,

Plaintiff,

vs.

CITY OF MONTEREY, TIM SHELBY in his  
 official capacity as Chief of Police for the CITY  
 OF MONTEREY, OFFICER KRIS  
 RICHARDSON individually and in his official  
 capacity as Police Officer for the CITY OF  
 MONTEREY, OFFICER JOHN OLNEY  
 individually and in his official capacity as Police  
 Officer for the CITY OF MONTEREY and  
 DOES 1-25 INCLUSIVE

Defendants.

) Case No. 5:12-cv-05418-PSG

) **PLAINTIFF J. ROBERT KILLIAN'S**  
 ) **STATEMENT OF NON-OPPOSITION TO**  
 ) **DEFENDANTS' MOTION TO DISMISS**  
 ) **PORTIONS OF PLAINTIFF'S**  
 ) **COMPLAINT**

) Date: January 8, 2013

) Time: 10:00 a.m.

) Location: Courtroom 5, Fourth Floor

) Honorable Magistrate Judge Paul S. Grewal

Pending before this Court is Defendant City of Monterey ("City"), Chief of Police Tim Shelby, and Defendant Officers Kris Richardson and John Olney's Motion to Dismiss Portions of Plaintiff's Complaint set for hearing on January 8, 2013 at 10:00 a.m. (Doc. 7). Defendant City moves this Court for an order granting dismissal of the prayer for an award of punitive damages as against it only because municipalities are immune from punitive damages under 42 U.S.C. section 1983 and punitive damages may not be awarded under section 202 of the Americans with Disabilities

1 Act. Plaintiff acknowledges that he expressly and only seeks punitive damages against the  
2 individually named defendant police officers. Additionally, Defendants Shelby, Richardson and  
3 Olney move this Court for an order granting dismissal of the Third cause of action, a violation of the  
4 Americans with Disabilities Act, as against them—the individually named officers—only, as  
5 individuals are not subject to suit pursuant to 42 U.S.C. section 12132.

6 By this Response, Plaintiff J. ROBERT KILLIAN states that he does not oppose the  
7 Defendants' Motion to Dismiss Portions of Plaintiff's Complaint on the limited grounds set forth in  
8 their motion.

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10 Dated: December 10, 2012

**LAW OFFICES OF JOHN L. BURRIS**

11  
12 /s/ John L. Burris

13 John L. Burris, Esq.  
14 Attorney for Plaintiffs  
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